FILED

96 161 JUL 3 1 1996

No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1996

CORNELL D. CORNISH,

Petitioner,

v.

DISTRICT OF COLUMBIA
COURT OF APPEALS

and

BOARD ON PROFESSIONAL RESPONSIBILITY,

Respondents.

Petition For A Writ of Certiorari
To The District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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CASILLAS PRESS, INC., WASHINGTON, D.C. 20036 - (202) 223-1220

26 pp

QUESTIONS PRESENTED

1. May the District of Columbia weaken the First Amendment protection of religion, speech, press, publicity and association by suspending a patent and copyright lawyer in a reciprocal action from a sister state so as to ban his advertising as a patent and copyright lawyer by prior restraint without a hearing or the lawyer's consent because of a presumption that the sister state presumed that he was disabled from his disclosure of his anonymous membership in a spiritual fellowship called Al-Anon for over 8 years.

2. May the District of Columbia convert a federal question into a state question when a patent attorney claims lack of jurisdiction in the District and a sister state to treat the question of duty of candor to the U.S. Patent and Trademark Office as a reciprocal suspension action from a sister state instead of a First Amendment and Article 1, Section 8 question.

3. May the District of Columbia use the presumption of disability by a lawyer in a sister state to reverse the burden of proof in a redundant, reciprocal order from a sister state when there is no claim of disability by the lawyer and he claims lack of due process by unclean hands, breach of duty of candor and a redundant, reverse palming off of an abandoned name never registered on the rolls of attorneys in either jurisdiction so as to weaken the protection of the 14th Amendment for the lawyer without a conclusive showing of disability.

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Petition For A Writ of Certiorari
To The District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

ORDERS BELOW

1. Redundant Order In The Court Of Appeals Of Maryland, Misc Docket (Subtitle BV) No. 39, September Term, dated December 4, 1995, by reverse palming off, placing abandoned common law name and trademark Cornell D. Cornish, a name never registered on the rolls of attorneys admitted to practice in Maryland, on inactive status.

2. Order In The Court of Appeals of Maryland, Misc. Docket (Subtitle BV) No. 44, September Term, dated February 7, 1996, denying request for dissolution or amendment of December 4, 1995 Order of inactivity by reverse palming off.

3. Order from District of Columbia Court of Appeals, dated February 20, 1996, by reciprocity from the Maryland order, holding in abeyance respondent's request for an oral hearing, and Bar Counsel's proposed order, by reverse palming off, suspending Cornell D. Cornish, an abandoned common law name and trademark never registered on the rolls of attorneys admitted to practice in the District of Columbia, with a non-functionally identical discipline, and ordering a 30 day suspension to allow the lawyer to obtain counsel. (17a)

4. Irregular Order from the District of Columbia Court of Appeals, dated April 15, 1996, vacating courts order holding in abeyance Bar Counsel's proposed non-functionally identical, reciprocal, order of suspension of the abandoned name and trademark Cornell D. Cornish by reverse palming off, in a reciprocal proceeding from the irregular, Maryland Order of December 4, 1995. (10a)

5. Order from the District of Columbia Court of Appeals, dated May 23, 1996, denying petitioner's request for hearing and reconsideration of April 15, 1996, Suspension Order because of grave injustice (also denying request for elimination of abandoned, reverse palmed off, name and trademark from Order). (14a)

BASIS FOR JURISDICTION

The order of the District of Columbia Court of Appeals was entered on May 23, 1996. Jurisdiction is conferred by 28 U.S.C. § 1254, 1257(2) and (3), 2104, 2403(b), 1331.

RULES INVOLVED

District of Columbia Rules Of Professional Conduct: D.C. App. R. XI, §11(d) Reciprocal Discipline; and §13 (d), (e) — Incompetent and Incapacitated Attorneys

STATEMENT OF THE CASE

Summary Of Reasons For Granting The Writ

The Petitioner, Cornell D.M. Judge Cornish, a citizen of the United States, a resident of the District of Columbia, and a patent and copyright attorney (inactive in Maryland by affidavit dated 12/9/95 and Order dated 2/7/96), admitted in New York, admitted in the District of Columbia (Order of suspension not yet final), the U.S. Patent and Trademark Office (presently inactive without claim of disability and subject to reinstatement upon paying any fees due), suspended in the U.S. District Court of the Southern District of New York until reinstated in Maryland, and admitted in the U.S. Tax Court (Order to Show Cause in abeyance), requests that this Court issue a **Writ of Certiorari** to resolve a First Amendment conflict between the States, The U.S. Tax Court and the Second Circuit, and the U.S. Patent and Trademark Office, as to whether the burden of proof can be shifted without a show cause hearing in his present, correct legal, religious and common law name and trademark so as to suppress his publication of his commercial speech of that name by prior restraint, and whether he should be suspended without his consent, without a show cause hearing in a "suspension upon a claim of disability by attorney" under D.C. Bar Rule X, §13(e) so that the District can seize and hold his right of publication by prior restraint in custodia legis with unclean hands by reverse palming off an abandoned name not registered on the rolls of attorneys licensed to practice in the District of Columbia.

Petitioner exercised his First Amendment right to fulfill his duty of candor to the Maryland Court of Appeals by disclosing his membership in Al-Anon to Bar Counsel in 1988, and met with the Bar Counselor suggested by a judge on the Court

of Appeals of Maryland. No grievance because of disability resulted therefrom, because membership in Al-Anon, with or without heart disease, and meeting with an Al-Anon sponsor, cannot without conclusive proof be used as a basis of "suspension upon claim of disability by attorney."

Petitioner later exercised his First Amendment right to fulfill his Duty of Candor before the U.S. Patent and Trademark Office, a federal question on what is patentable, so as to assign his invention to his co-inventor after filing a provisional patent application as to improvements on an invention that was the subject matter of an earlier filed Design Patent Application. 37 CFR 1.56

Instead of accepting the assignment as a co-inventor, the latter asked the Maryland Grievance Commission for an advisory opinion as to his sole inventorship, but they lacked the jurisdiction to give such an opinion under Article 1, Section 8 and the First Amendment of the U.S. Constitution, which preempts the field of patents on inventions as a federal question, whereby Maryland and the District were without jurisdiction on this federal question, all of which is a proper issue for a **Writ of Certiorari.** *Sperry v. State of Florida,* 373 U.S. 379 (1963). *See also Jaffee v. Redmond,* No. 95-266, __ U.S. __, June 13, 1996; *Selling v. Radford,* 243 U.S. 46; *Theard v. U.S.,* 354 U.S. 278; *Staub v. City of Baxley, Ga.,* 355 U.S. 313; *Dpt. of Mtr. Veh. of State of Cal. v. Rios,* 410 U.S. 425; *White v. State of Md.,* 373 U.S. 59; *Public Affairs Associates, Inc. v. Rickover,* 369 U.S. 111, App. D.C. 1962; *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462; *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission,* 393 U.S. 106; *State of Rhode Island and Rhode Island Liquor Stores Association,* 94-1140, __ U.S. __, (May 13, 1996). Thereupon, the petitioner repeatedly asked for a hearing before Bar Counsel, but his requests were refused.

As an alternative to the requested advisory opinion, and the acceptance of the assignment by the co-inventor in accordance with Bar Counsel's approval, Bar Counsel suggested a mediated settlement of the concerns of the parties over the inventorship of the patent, whereby petitioner became inactive in Maryland by a non-disability, joint petition under his First Amendment right to petition the government for redress of his grievances against Bar Counsel for not giving him a hearing and not getting the co-inventor to accept the assignment in accordance with the urgings of Bar Counsel. To this end, the Bar Counsel prepared the joint petition, which was in part incomprehensible so that the original with the original Bar Counsel signature thereon on was never filed in the Court of Appeals (See appendix, p. 2a). However, an affidavit of voluntary inactivity was filed in petitioner's name, while a redundant petition was reverse palmed after being changed without two proper original signatures. The petition was redundant because it concerned an abandoned name never registered on the rolls of attorneys in Maryland because it had been abandoned by court order in the District of Columbia (See Appendix, p. 1a). It was converted into a redundant claim of disability by the Maryland court without a claim of disability by lawyer (See Appendix Rule XI, §13(e), on the presumption that petitioner's confidential association in a spiritual fellowship named Al-Anon was conclusive proof of disability. As shown by affidavit and letter evidence (See Appendix, p. 4a, 7a), however, Al-Anon made possible the retention of remarkably good health by giving up non-patent and copyright "pro bono" work in Maryland, and scrupulously adhering to a regime of exercise that creates a new life style affect, i.e., feeling, as an motivational tool, whereby the new life style can endure, i.e., "suffers lasting affects from open heart surgery in 1982 and he goes to rehabilitation every day and rests for some time thereafter."

Moreover, the Court of Appeals, with unclean hands and bias against the petitioner's name "Judge", that had nothing to do with any disability, insisted on redundantly issuing an order of inactivity (See "disability" Rule §13(e)) by reverse palming off an order of inactivity in an abandoned name that was never registered on the rolls of attorneys licensed to practice law in Maryland or the District of Columbia.

The District also has unclean hands by infectious unenforceability. To this end, there is no presumption that their reciprocal order of discipline reverses the burden of proof, since their order is functionally non-identical to a redundant order of discipline in a state that lacked clear and convincing evidence of disability, and lacked jurisdiction to issue an order of discipline on a federal question in a preempted field with unclean hands in the first place by reverse palming off a name never registered on the rolls of attorneys licensed to practice in the District of Columbia or Maryland. The District compounded the unclean hands of Maryland by infectious unenforceability by issuing their own order that by reverse palming off subverts the judicial machinery, denies petitioner a hearing, shifts the burden of proof without a show cause hearing, and subverts the protection of petitioner's First Amendment and due process rights under the Fourteenth Amendment.

The District, claims that they can shift the burden of proof without a show cause hearing by prior restraint of petitioner's right of speech on the basis that there is a conclusive "suspension upon a claim of disability by attorney" on the face of the orders themselves. Thus, their goal was to eliminate their burden of proof by suspending him with a non-functionally identical syspension by the application of reciprocity under D.C. App. Rule XI, §11(d) and §13(e) by eliminating §13(d), even though petitioner has repeatedly renounced and repudiated any such claim of attorney disability.

Petitioner claims that his inactivity for convenience by consent in a sister state does not weaken his First Amendment rights by shifting the burden of proof to him without his consent and without a show cause hearing in a reciprocal action in a state that suspends him from practice by seizing in custodia legis his unique, legal, religious and common law name, trademark, and the good will attached thereto, in a reciprocal state action by the reverse palming off with unclean hands of a defunct, abandoned name and trademark in a reciprocal action from a sister state.

The petitioner claims that the sister state and the reciprocal state lacked jurisdiction for their actions by preemption, refusal to disclose petitioner's lack of disability, which they well knew since 1988, and failure to claim any such disability in connection with heart disease or his Al-Anon membership. Thus, the question also arises as to whether the District could weaken his due process hearing right in the reciprocal suspension action by failure to give the oral hearing requested by petitioner, such as in 40 days as is required under federal jurisprudence. Still further, the question arises in the reciprocal state as to whether their unproved hypothesis of "suspension upon a claim of disaiblity by attorney" could be sustained to the effect that there was a per se claim of disability by the petitioner so that the burden of proof can be shifted without a show cause hearing by reciprocity, thus, to overcome the First Amendment's protection of commercial speech by eliminating the government's burden to prove that the "restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest." *44 Liquormart, Inc. and Peoples super Liquor Stores, Inc. v. State of Rhode Island and Rhode Island Stores Association*, No. 94-1140, __ U.S. __, (May 13, 1996).

There is also a split on the point in the U.S. Tax Court and the U.S. District Court for the Southern District of New York,

since a reciprocal show cause hearing was granted in the U.S. Tax Court as a matter of right within 40 days as required in *Selling v. Radford,* 243 U.S. 46, (so far without a suspension as described in the transcript of the hearing), and the requested hearing was denied in the U.S. District Court of the Southern District of New York, and both jurisdictions recognized his current, uniquely designed legal, religious, and common law name and trademark, and the good will that are attached thereto in the various states under their jurisdiction and the jurisdiction of the patent and copyright offices, whereas both the District of Columbia and Maryland denied petitioner a hearing and their Orders inactivating and suspending the petitioner were made by reverse palming off and unclean hands, and without a show cause hearing. Md Rules (BV 13) (BV 10(d).

Procedural History

Petitioner has practiced his profession as an inventor and as a patent, trademark and copyright attorney since 1958. He filed a provisional patent application in his name and the name of another in accordance with his First Amendment right to Exercise his duty of candor before the U.S. Patent and Trademark Office. *See Jack Winter, Inc. v. Koratron Company, Inc., et al.,* 50 F.R.D. 225 (1970); *Kingsland, Commissioner of Patents v. Dorsey,* 338 U.S. 318 ((1949), and the lawyer's duty of candor to the U.S. Patent and Trademark Office set out by the United States Supreme Court in *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.,* 324 U.S. 806, 818, 65 USPQ 133, 139 (1945), *See also A.B.Dick Co. v. Burroughs Co.,* 798 F.2d at 1396, 230 USPQ at 853). Md Ann Code Art 10, Sec. 1; 61 Op. Att. Gen. Md. 43.

In the subject case, Petitioner selectively consented for the convenience of the state of Maryland only to a mediation limited to the seizure and holding in custodia legis of petitioner's now

defunct, and abandoned name and trademark for the practice of non-patent law in Maryland only. There was no finding of disability for reasons of health as in *Atty. Griev. Comm. v. Kenney*, 339 Md. 578 or *In re Samuels*, 648 A. 2d 943 (D.C. 1994); no acquiescence and failure to object, as in *In re O'Brien*, 665 A. 2d 662 (D.C. 1995), where, unlike this case, no exceptions were filed; there was no sufficient proof of misconduct, as in *In re Velasquez*, 507 A.2d 145 (D.C. 1986); and in none of these cited cases was there a limited and restricted order of inactivity in Maryland only that resulted from a mediated settlement with Bar Counsel as a party in return for petitioner's assignment of his invention to his co-inventor at the convenience of the State of Maryland in accordance with petitioner's First Amendment right to disclose the fact that he was a member of Al-Anon, and file his invention in order to satisfy a federal question and his duty of candor to the U.S. Patent and Trademark Office.

The result of the District's suspension order is a prior restraint of petitioner's commercial free speech before the Patent and Copyright Offices, as well as in newspapers and directories in the reciprocal state and other states, whereby, by prior restraint, the reciprocal state could ban the lawful, truthful and non-misleading use of the lawyer's correct, current, legal, religious and common law persona and trademark and the good will attached thereto, such as in telephone book advertising and even in his suspension order, which, by reverse palming off and unclean hands, redundantly used a now defunct and abandoned name as a settlement in a mediation. The government's burden to prove that the lawyer is disabled and unable to practice law in the District of Columbia, was effectively eliminated despite his exceptions and his exercise of his First Amendment duty of candor before the U.S. Patent and Trademark Office and the Bar Counsels' Offices, as well as to bar counselors in both jurisdictions since 1988. See the lawyer's duty of candor to the U.S. Patent and Trademark

Office set out by the United States Supreme Court in *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 34 U.S. 806, 818, 65 USPQ 133, 139 (1945).

Thus, the Court of Appeals of the District of Columbia by the Doctrine of "infectious unenforceability" erroneously ordered that the restriction by prior restraint on petitioner's speech and right of publicity is valid, despite the attorney's compliance with his duty of candor before the U.S. Patent and Trademark Office and the Maryland Grievance Commission, and despite and undisputable lack of any claim of attorney disability. Those words are used no where in the petition.

The doctrine of "infectious unenforceability" was adopted in *Armor & Co. v. Wilson & Co.*, 168 F.Supp. 353, 119 USPQ 365 (N.D. Ill. 1958); the doctrine of unclean hands is discussed in *Guadiosi v. Mellon*, 269 F.2d 873, 882 (3d Cir.), *cert denied*, 361 U.S. 902 (1959). The doctrine of inequitable conduct is discussed in *17* AIPLA QJ 338, 356. The doctrine of reverse palming off is discussed in *Smith v. Montoro*, 648 F.2d 602 (9th Cir. 1981); and *Marling v. Ellison*, 218 USPC 702 (SD Fla. 1982). The seizure of property protected by the First Amendment is discussed in *Europa Books, Inc. v. Pomerleau*, 41 Md. App. 114; and the right of publicity is discussed in *Zacchini v. Scripps-Howard Broadcasting Co.*, 443 U.S. 562 (97 S.Ct 2849), and in petitioner's Amicus Curiae Brief in *Parker v. Chakabarty*, 477 U.S. 303, 206 USPQ 193 (S.C. 1980). *See also International News Service v. The Associated Press*, 248 U.S. 215.

C. Daniel Cornish, is an abandoned trademark registered on admission to the bar of the State of Maryland on 11/9/56 and before the U.S. Patent and Trademark Office on 11/5/58. Cornell D. Cornish is also an abandoned common law trademark. This is the name and common law trademark of petitioner's son, who has acquired good will in connection therewith. A still further abandoned trademark is Cornell

Daniel Cornish used on admission to the bar of the District of Columbia on 11/4/82. Obviously, there are significant and material differences between these marks in spelling, appearance, sound, meaning and commercial impression, as well as in their legal status as abandoned names and marks (trademarks and servicemarks), and as to their good will.

Cornell D.M. Judge Cornish, is an entirely different legal and religious name by court order, and also is a common law name, trademark and persona in accordance with a court order of September 13, 1990 by the Superior Court of the District of Columbia (See Appendix, p. 1a). Well established case law and long lasting and well established religious custom and law holds that a persona is changed by a name change. It is also well established that a persona has only one correct name to the exclusion of all other names after his name is changed by a court. *Brayton v. Beall,* 53 S.E. 641, 73 S.C. 308.

Jurisdiction is based upon: (1) 28 U.S.C. §1331 (federal question); (2) 28 U.S.C. §1257; (3) 28 U.S.C. §1254; (4) 28 U.S.C. §1257(2); and (5) S.C. Rule2403 (b).

Facts

The District of Columbia in a reciprocal action suspended the appellant without a show cause hearing based upon a mediated settlement in the State of Maryland leading to a redundant order relating to the already abandoned name "Cornell D. Cornish", which never appeared on the rolls of attorneys in Maryland. Thus, the order in Maryland was redundant. This order on its face was not only redundant, it was irregular by reverse palming off and was the result of unclean hands.

Bar Counsel, was without probable cause, and had prior knowledge that prevented him from petitioning for an order of inactivity by "suspension upon claim of disability by attorney." Petitioner's response to the request for an advisory

opinion, in the caption in his request for reconsideration to the Maryland Court's order of inactivity, referred to petitioner's inability to address an unreasonable demand for an advisory opinion on a federal question in a Maryland grievance proceeding because of the lack of jurisdiction to handle such a case under the preemption clause of Article 1, Section 8 of the U.S. Constitution. *Sperry v. State of Florida,* 137 U.S.P.Q. 578 (S.C. 1963). He also was unable to find an effective, clean and sober attorney familiar with Al-Anon who could handle his case (See Appendix, p. 21a, relating to counsel).

Clear, convincing and unquestioned evidence of reverse palming off, lack of disability, and irregularity has been supplied by petitioner. (See attached affidavit in appendix, p. 7a). This evidence also shows that Petitioner's inactive status in Maryland is not, was not, and could not be equated with "suspension upon a claim of disability by attorney" under Rule XI, 13(e). In any event, the court was without jurisdiction to equate inactivity with "suspension upon a claim of disability by attorney" under the Rules, whether or not the burden is on petitioner to terminate his inactive status under these Rules, because he never consented to such equating and was not on notice that such an equating was imminent or could take place, and the Rules thereon are functionally non-identical in the District from those in Maryland.

Reasons For Granting The Writ Are Substantial

A. The First Amendment precludes certain forms of regulation of free speech and purely commercial speech, including **the right of publicity to a lawyer's legal, religious and common law trademark, name and persona sa a patent attorney and an inventor before the U.S. Patent and Trademark Office in a provisional patent application that is preempted under Article 1,**

Section 8 of the U.S. Constitution, by a requirement of a duty of candor and his desire to assign his invention to his co-inventor, and that right is not destroyed in a reciprocal state by infectious unenforceability due to the lawyer's consent to become inactive in a sister state or a presumption in favor of reciprocal discipline, or "suspension upon a claim of disability by a lawyer."

B. The District of Columbia's unclean hands and reverse palming off of an abandoned name, and failure to use petitioner's correct persona, and his legal, religious and common law name and trademark as a patent, copyright and trademark attorney does not Directly Advance Its Interest In Protecting the Public To A Material Degree, Thereby Failing the Third Part Of The Central Hudson Test. (*Central Hudson Gas & Electric Corp. v. Public Service Commission of New York,* 447 U.S. 557 (1980).

Under the second part of the established **Central Hudson** test there is no presumption or proof that the petitioner is an alcoholic, or that he is disabled by heart disease or association with Al-Anon, or that his name and trademark are not Cornell D.M. Judge Cornish or that this legal and common law name currently should not be registered in the District of Columbia. Moreover, under the **Central Hudson** test, there is no presumption that modifies or shifts the burden of proof under the third and fourth parts or the final prong of the test because that would lead to an unsupervised abuse of discretion, as in the case at hand. There are no scientific studies that even remotely show that membership in Al-Anon alone or in combination with lasting good "affects" (feelings) of heart surgery for fourteen years by scrupulous adherence to an exercise program, and consultation with an Al-Anon sponsor whose goal it was to help petitioner set boundaries of unwillingness to cope with the demands of "pro bono" work in

Maryland, is evidence of anything other than a measured approach to stress reduction. This "health" related life style and quality of life need not require a ban of a lawyer's First Amendment rights, incldng his right of exercising his duty of candor before the U.S. Copyright and Patent and Trademark Offices and before the Maryland Grievance Commission, or truthfully and non-misleadingly publicizing his correct persona, name and trademark because this ban has no direct effect upon lawyer competence or protection of the public against incompetent and/or disabled lawyers in the District of Columbia. The ban against using his correct persona, name and trademark as mentioned does not directly affect professional standards one way or the other. It affects them only through the reactions it is assumed people will have to the free flow of information about a persona and his correct name and trademak as a patent, copyright and/or trademark attorney.

Indeed, false and misleading publicity will result from the reverse palming off and unclean hands causing the ban.

The ban is undeniably more extensive than necessary to serve the State's interest. Thus, the ban must be "narrowly tailored".

There is, of course, an alternative to the highly paternalistic, presumptively biased animus and unclean hands behind the District's orders not to use the name "Judge" in their order. This can simply be to provide the petitioner with a show cause hearing, with a possibility of a full hearing, as was done by the U.S. Tax Court, which has withtheld disciplining the petitioner; accept the lawyer's correct name, as was done by the U.S. Tax Court and the U.S. District Court of the Southern District of New York and accept the petitioner's offer to become inactive in the district of Columbia by affidavit under his current name without any discipline. They could even hold any discipline in abeyance, such as they did in their order of

February 20, 1996, as the Tax Court has done. A bond could be requested, as in any custodia legis case.

The District did not offer any hypothesis concerning misconduct, and there is lack of jurisdiction to do so in the face of a presumption that the federal question involved is preempted by the federal government under Article 1, Section 8. The District offers one, and only one, justification for its ban, namely: "D.C. Bar Rule XI, §13(e) (suspension upon a claim of disability by attorney)." Here, however, there is no claim of disability by petitioner. Indeed, he has renounced and repudiated any such claim, and the cases cited by the Respondent, are devoid of any such repudiation and renouncement. Indeed, the cases cited by respondent can easily be distinguished from this subject case because they lack any repudiation and renouncement of suspension upon claim of disability by attorney in the District of Columbia.

There is no evidence to support the conclusion that petitioner's desire not to cope with the demands of "pro bono" law outside the field of patent, copyright and trademark law in Maryland was a claim of disability in either Maryland or the District of Columbia. Indeed, the choice of words by Bar Counsel to equivocally express evidence that Petitioner suffers from lasting good affects from open heart surgery in 1982, is consistent with bias, duress and lack of candor and unclean hands by Bar Counsel relative to the stress of lawyers and judges now on the Maryland Court of Appeals who have had heart bypass surgery and who daily deal with the effects of alcohol in their lives. Indeed, those judges, like the petitioner, have restored the stress free quality of their lives to a level it would have had without heart disease and the affects (second order, indirect feelings) of alcohol on their lives, because the lasting **affects** include a strong motivation to adhere to a stress free life, a scrupulous and rigorous exercise program,

and membership in Al-Anon, all strong indicators of good health and lack of disability.

Bar Counsel's goal in the District of Columbia is to avoid the burden of proof in a show cause hearing by unilaterally banning petitioner's speech by prior restraint, by a misleading reverse palming off, by unclean hands, and by a misleading massage of the language used in the irregular joint petition filed in Maryland.

Leaving aside the unreasonable nature of this goal, the fit between the District's method and this particular goal, and also the lack of similarity and fit between the abandoned and unabandoned names and trademarks, is significant.

C. The District Of Columbia's Ban On Publicity And Speech Does Not Directly Advance Its Interest In Protecting The Public To A Material Degree Thereby Failing The Third Part Of The Central Hudson Test.

D. The District of Columbia's Ban On Lawful, Truthful And Non-misleading Publicity And Speech Is More Extensive Than Necessary Under Article 1, Section 8 And The First Amendment Of The U.S. Constitution.

E. The Court of Appeals Conflicted With The Decisions Of This Court Under the Fourteenth Amendment.

In each of the cases cited in *Liquormart Inc., v. Rhode Island,* No. 94-1140, decided May 13, 1996, the court declined to accept at face value the profferred justification for the State's regulation or lack of regulation and its abuse of discretion, but examined carefully the relationship between the asserted goal and the speech restriction used to reach that

goal so that the speech restriction directly advances its interest and is narrowly tailored.

Also, the reciprocal discipline is not functionally identical because there is no "suspension upon a claim of disability by attorney" in either Maryland or the District of Columbia. *In re O'Brien*, 665 A.2d 662 (D.C. 1995); *In re Samuels*, 648 A.2d 943 (D.C. 1994); *In re Gardner*, 640 A.2d 693 (D.C. 1994); *In re Zilberberg*, 612 A.2d 832 (D.C. 1992); *In re Velasquez*, 507 A.2d 145 (D.C. 1986). *Compare Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626 (1985); *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), and *Bates v. State Bar of Arizona*, 433 U.S. 365, 353-354 (1977).

Conclusion

The District of Columbia Court of Appeals improperly ordered, in conflict with the U.S. Tax Court and the District Court for the Southern District of New York, and in conflict with the First and Fourteenth Amendments and Article 1, Section 8 of the U.S. Constitution that it could, without the show cause hearing requested by petitioner, reciprocally ban petitioner's lawful, truthful and non-misleading speech by prior restraint, or punish his First Amendment rights, including exercising his duty of candor, or in the truthful and non-misleading use of his correct legal, religious and common law name and trademark all with a procedure so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; all with such an infirmity of proof establishing misconduct or disability as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; all so that the imposition of the same discipline by reverse palming off would result in a grave injustice; all warranting a substantially different discipline or

result in the District of Columbia; and all because there any question of misconduct is a federal question that is preempted in the District of Columbia. The petitioner respectfully submits that his petition for a **Writ of Certiorari** to the Court of Appeals of The District of Columbia should be granted.

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Date: July 31, 1996